IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1356 of 2001
With
SPECIAL CIVIL APPLICATION No 1357 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SONALBEN VASUDEV PRASAD JANI
Versus
MUNICIPAL GIRLS HIGH SCHOOL

Appearance:
1. Special Civil Application No. 1356 of 2001
MR AK CLERK for Petitioner No. 1
MR HM PARIKH for Respondent No. 1
MR PREMAL JOSHI, AGP for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 31/07/2001

COMMON ORAL JUDGEMENT

#. Leave to amend by joining the Secretary, Finance Department as well as the Secretary, Education Department as party respondents in each of the petitions.

#. Rule. Mr.Parikh waives service of rule for respondent No.1 in each of the petitions and Mr.Joshi

waives service of rule for respondent No.2 as well as for newly added respondents.

#. By consent of the parties, both these petitions are taken up for final hearing and are being disposed of by this common judgment.

#. The issue involved in these petitions is related to the appointment of teachers in the educational institutions. Since the State Government has refused to grant approval for appointing the concerned teachers in the municipal school, teachers who are already recruited have approached this court challenging the action of the State Government in not granting approval to respondent No.1 institution to appoint them in the school. The stand taken by the State Government is that in view of the economy measure, it is not possible to give approval for recruitment of teacher in the educational institution and by way of austerity measure, policy decision is taken not to allow the educational institutions to fill up vacant posts and that permission for recruitment is granted only upto 80% of the posts, keeping 20% of posts vacant. Under these circumstances, permission is not granted to appoint the teachers in each of the schools and those teachers, who have already been selected by way of regular selection procedure, have challenged the said action of the State Government in these petitions.

#. So far as special civil application No.1356 of 2001 is concerned, the said petition has been filed by the candidate who was selected by the Selection Committee for the post of a teacher in Sanskrit subject. Since respondent No.1 institution is not having any qualified Sanskrit teacher who can teach Sanskrit subject, the school sought permission from the Education Department to give them NOC for the purpose of appointing the teacher in Sanskrit subject. It is not in dispute that there is no Sanskrit teacher in respondent No.1 - school. It is not in dispute that by order dated 26.6.2000, the State Government through the District Education Officer granted NOC to respondent No.1 - institution for recruiting Sanskrit teacher. After receiving such NOC, respondent No.1 - institution gave advertisement in the newspaper inviting applications for the purpose of recruiting Sanskrit teacher. The Selection Committee thereafter took interviews and ultimately selected the present petitioner for the purpose of appointment in the respondent - institution on the post of Sanskrit teacher. It is required to be noted that the respondent institution has asked permission for recruiting Sanskrit teacher as well as a teacher of Physical Education, and

therefore, advertisement was also given by the Management inviting applications for the purpose of appointment of Sanskrit teacher as well as Physical Education teacher. So far as selection of the teacher of Physical Education is concerned, subsequently the Education Department also gave approval for the purpose of appointing such teacher of Physical Education. However, so far as the Sanskrit teacher is concerned, even though earlier NOC was granted which is subsequently followed by regular selection procedure, yet no approval was given for appointment of such Sanskrit teacher. The present petitioner who was selected by the Selection Committee, has challenged the said action by way of filing the present special civil application.

#. So far as special civil application No.1357 of 2001 is concerned, respondent No.1 - Management has sought for permission for recruiting a teacher in the subject of Mathematics. As there was only one Mathematics teacher available at the relevant time in the said subject, the Management sent requisition for appointing one more teacher in the subject of Mathematics and for that purpose, NOC was sought for. It is not in dispute that the District Education Officer granted NOC, meaning thereby, permission was given to the Institution for recruiting teacher in the subject of Mathematics. After receiving NOC, the Management gave public advertisement inviting applications for the purpose of appointment of a teacher in the Mathematics subject. The petitioner of Special Civil Application No.1357 of 2001 appeared before the Selection Committee and was ultimately selected. Subsequently, he has challenged the action of the State Government in not granting approval for his appointment.

#. In both these petitions, the challenge is against the action of the Education Department in not granting approval for recruiting the teachers. The said action is accordingly challenged on various grounds.

#. At the time of hearing of these special civil applications, Mr.Clerk, appearing for the petitioners, argued that the action of the State Government in not granting approval is arbitrary, illegal and discriminatory. He submitted that the State Government cannot refuse approval for recruiting a teacher only on the ground of economy measure. He further submitted that when the Institution is not having sufficient number of teachers, such permission cannot be refused only on the ground that the Management cannot fill up all the existing vacancies and they can recruit the teacher only upto 80% of the vacancies and not beyond that. It was

submitted by Mr.Clerk that the District Education Officer having been satisfied about the need of the institution for recruiting teacher in the subject of Sanskrit as well as in the subject of Mathematics, granted No Objection Certificate and, therefore, the need of the Management for recruiting teacher is not in dispute. He also further submitted that, in the Selection Committee, even the representative of the Education Board was also present and after regular Selection Procedure, both these petitioners have been found fit and, ultimately, selected by the Selection Committee and they have been appointed subject to the approval of the Government. It was submitted that, looking to the facts and circumstances of the case, therefore, the action of the State Government in not granting approval is absolutely arbitrary.

#. Mr.H.H.Parikh, learned advocate who is appearing for the institution in each of the petitions submitted that the school is not having adequate Mathematics teacher so far as special civil application No.1357 of 2001 is concerned and so far as special civil application No.1356 of 2001 is concerned, the institution is not having a single Sanskrit teacher and therefore, the institution is badly in need of the Sanskrit teacher as well as the teacher of Mathematics as the case may be. He has supported the arguments of Mr.Clerk.

##. It is required to be noted that since the NOC was granted by the State Government, the management, in anticipation of getting approval, has already appointed the petitioners on the respective posts of Sanskrit teacher as well as Mathematics teacher, as the case may be, but since approval has not been granted, the petitioners are discharging their duties without getting any salary from the school. It is required to be noted that so far as respondent No.1 - management is concerned, it is a Municipal School run by the Municipality and the same is not a private institution as it is being managed by the Municipality. Since respondent No.1 management is not having adequate teachers, they are taking services of the petitioners without giving a single pai towards their salary.

##. Mr.Joshi, learned AGP, in his turn, submitted that it is, no doubt, true that the District Education Officer has already granted NOC in favour of respondent No.1 institution. However, in his submission, because of the policy of imposing economic cut, and on the basis of the instructions given by the Finance Department to various Departments of the State and by way of economy measures, approval is refused by the Education Department. Since

the Management is already having 80% of the strength of the teachers in the Institution, the remaining 20% is required to be kept vacant. According to Mr.Joshi, therefore, in view of the economy measures, approval is not granted to the respondent No.1-Institution to appoint the aforesaid two teachers. Mr.Joshi has relied upon the Resolution of the Education Department dated 30.11.2000, wherein it is stated that the permission can be granted to fill up vacancy upto 80% and the remaining 20% is required to be kept vacant. In the further affidavit-in-reply, a reference is made regarding Finance Department's Resolution dated 9.9.1998, which provides for curtailment of administrative expenditure upto 10%. It was submitted by the learned AGP that in view of the Resolution dated 30.11.2000, no approval can be granted to the respondent No.1-Institutionk to appoint Sanskrit Teacher as well as Mathematics Teacher. Mr.Joshi has also relied upon the Resolution of the Finance Department of the year 1991, which deals with imposition of cut to a certain extent in the expenditure. The Resolution of 1991 prescribes for restriction in the matter of creation of new posts. However, it provides that by taking prior permission of the Finance Department, new posts can be created by the educational institutions. It is required to be noted that by Resolution dated 30.11.2000, the Education Department has clearly stated that only 80% posts can be filled in. It further provides that even within that limit, preference should be given for appointing teachers in the subjects of Mathematics, Science, English and Sanskrit. It is required to be noted that in spite of the said Resolution, approval was granted to the respondent No.1-Institution to appoint teacher in Physical Education and no approval was given for recruiting Sanskrit / Mathematics Teacher.

##. The facts stated above clearly show how the Education Department has acted in the matter of recruitment of a teacher in the Institution, especially when it is an admitted fact that adequate teachers are not available in the particular subject in that Institution. It is a matter of regret that even in the Institution, like the respondent No.1, which is a Municipal School, such rigid and non-pragmatic approach is taken by the State Government. The respondent No.1-Institution is not having a single Sanskrit teacher and adequate Mathematics teachers are also not available; yet, the said Institution is deprived from appointing teacher in the said subject. It is a matter of common knowledge that so far as the Municipal schools are concerned, the students who are not in a position to afford heavy fees are usually taking their education in

such Schools. Now, the students will have to undergo their study without there being a teacher in the subjects of Sanskrit / Mathematics. It is difficult to understand as to how the students will be able to get knowledge and education in the subjects of Sanskrit and Mathematics in absence of adequate teachers. It is the moral and social obligation of the State to provide adequate number of teachers in the educational institution and all reasonable facility is required to be given. For want of teachers, the ultimate sufferers are the students. In my view, there are so many other Departments of the State, where policy of imposing financial cut as economy measure can be applied, but Education is such a field that it is required to be spared, as, on the ground of austerity or economy measure, Educational Institutions should not be compelled to impart its educational activity without sufficient number of teachers. The State Government unfortunately failed to carry out its moral and social obligations towards the society by adopting economy measures even in the case of recruitment of a teacher in an educational institution. It is also required to be noted that in spite of the said Resolution of the Education Department dated 30.11.2000, the Department had already granted permission to recruit Physical Education Teacher by granting approval to the respondent No.1-Institution for the same and not only that, even NOC was granted to the respondent No.1-Institution for recruiting Mathematics and Sanskrit Teachers.

##. Mr.Clerk has relied upon the judgment of the Apex Court reported in (1997)3 SCC 571 in the case of K.Krishnamacharyulu and others v. Sri Venkateswara Hindu College of Engineering and another. The said decision is pertaining to pay-scale of the teachers in the non-aided institution. The Apex Court has considered this aspect and has come to the conclusion that the element of public interest requires to regulate conditions of service of those employees at par with government employees. It has been observed in para 4 as under :-

> " ... ...
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> It is not in dispute that executive instructions issued by the Government have given them the right to claim the pay scales so as to be on a par with the government employees. The question is when there are no statutory rules issued in that behalf, and the institution, at the relevant time, being not in receipt of any grants-in-aid; whether the writ petition under Article 226 of the Constitution

is not maintainable ? In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education get an element of public interest in the performance of their duties. As a consequence, the element of public interest requires regulation of the conditions of service of those employees on a par with government employees. In consequence, are they also not entitled to the parity of the pay scales as per the executive instructions of the Government ? It is not also in dispute that all the persons who filed the writ petition along with the appellant had later withdrawn from the writ petition and thereafter the respondent-Management paid the salaries on a par with the government employees. Since the appellants are insisting upon enforcement of their right through the judicial pressure, they need and seek the protection of law. We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institutions cater to the need of providing educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the Industrial Disputes Act. When an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226; the jurisdiction part is very wide. It would be a different position, if the remedy is a private law remedy. So, they cannot be denied the same benefit which is available to others. Accordingly, we hold that the writ petition is maintainable. They are entitled to equal pay so as to be on a par with government employees under Article 39(d) of the Constitution.

... ..."

##. In the instant case, though the institution is not having Sanskrit teacher worth the name, nor is it having adequate Mathematics teacher, the Government has refused to give permission for recruiting such teachers. The facts of the case, therefore, clearly show that the State

Government has completely failed to discharge its obligation. It is the duty of the State to see that the educational activities are required to be encouraged and whatever benefits are required to be given for that purpose, are required to be given and if there is any financial difficulty or any economy measure is required to be undertaken, there are so many other departments or subjects on which economy measure can be applied. I am therefore of the opinion that the resolution of the Education Department dated 30.11.2000 by which it has been decided not to give approval to fill up the available posts in the educational institution is absolutely arbitrary, discriminatory and contrary to public interest and interest of the educational institutions of the State as a whole. In the matter of recruitment of staff/teacher in the school or college, such imposition can never be imposed and if it is found that the recruitment is genuine, the State Government is bound to accord approval for recruitment of such staff in the educational institution. Only on the ground of economy measure, no educational institution should be compelled to keep any post vacant.

##. Teaching is the noblest of all avocations and hence, teachers, who shape the future of our children, need a better treatment. In our country, which is governed by Rule of law, our children, who are the future of this country, need cent percent education and literacy and opportunity to come up in life, and, therefore, the full strength of teachers are required to be appointed, not the 80%, as propounded by the Government.

On the ground of economy, quality education is denied to the children due to non-availability of adequate number of teachers and the same can be termed as human rights violation of these school children.

Education is of basic importance. There is nothing which is of greater importance than education. The amount spent on education is nothing but an investment for the future of the country. Unless we can raise the educational standards, we can never advance as a Nation. Therefore, education should be given priority.

The specious plea of economy on the part of the Government in the impugned action shows the lack of enthusiasm on its part in the field of education.

In this unsavoury episode, the silent suffering spectators are the school children of impressionable age, who are not even represented before this Court either by

their parents or some well-meaning non-governmental organisations who are prepared to espouse their cause. Even, there is violation of Article 21 of the Constitution of India, in as much as, the hapless school children studying in these schools are not imparted education with sufficient strength of teachers. It is needless to reiterate that right to life enshrined in Article 21 means something more than survival or nominal existence. It would include all those aspects of life which go to make a man's life meaningful, complete and worth living.

Right of every child to full development is treated as fundamental right. Similar is the case as regards right to education. In Miss Mohini Jain v. State of Karnataka and others, AIR 1992 SC 1858, the Apex Court held as under :-

> " ... ...
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> The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional-mandate to provide educational institutions at all levels for thT.....
>
> institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society.
>
> ... ...

It goes without saying that for the educational institutions to function to the best advantage of the citizens, full complement of teachers is absolutely necessary. In fact, it will be a pious obligation of the State to see that sufficient financial help is provided to an institution imparting education so that money invested for such activity will result in bringing out out good citizens with proper knowledge and education.

##. Under these circumstances, therefore, I am of the opinion that there was absolutely no justification on the part of the State Government to refuse approval for recruiting the teachers of Sanskrit and Mathematics. It is required to be noted that if this is the position of the schools run by Municipal Corporation which is a public body, it is difficult to imagine the situation of the private institution in this behalf. Under the aforesaid circumstances, therefore, I direct the State Government to

give approval to respondent No.1 institution for the purpose of recruiting the teachers of Sanskrit and Mathematics and the teachers who are already recruited by the institution since 5.9.2000. Such approval should be granted within a period of 15 days from today with retrospective effect. Respondent No.1 is directed to pay salary to the petitioners-teachers from the date from which they are discharging their duties as teachers in respondent No.1 institution. The unpaid salary of the petitioners should be paid within a period of 15 days from today. It is hoped that some rational and pragmatic approach will be taken in future if the issue regarding recruitment of staff or teacher arises in the educational institutions.

##. In view of the above, the petitions deserve to be allowed and accordingly the same are allowed and the impugned Government Resolution No.BMS-1398-3082-G dated 30.11.2000 is quashed and set aside and it is directed that the financial cut, economy measure or austerity measure should not be made applicable so far as Educational Institutions are concerned, especially for the purpose of recruitment of teachers in the educational institutions. Rule is made absolute with no order as to costs.

(P.B.Majmudar, J.)

(pathan)